

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SELOMI M. VILLALTA,

No. C 06-4087 SBA

Plaintiff,

ORDER
[Docket No. 15]

v.

EMILIA BARDINI, Director of the San

Francisco Asylum Office,

Defendant.

This matter comes before the Court on Plaintiff Selomi M. Villalta's ("Plaintiff") Motion for Permission to File a Motion for Reconsideration. Having read and considered the papers presented by plaintiff, the Court hereby DENIES the Motion [Docket No. 15].

Background

On June 30, 2006, plaintiff filed a complaint [Docket No. 1] and a Motion for Leave to Proceed in forma pauperis [Docket No. 3]. On August 9, 2006, this Court denied plaintiff's Motion for Leave to Proceed in forma pauperis and dismissed the complaint for failure to state a claim [Docket No. 4]. On June 29, 2008, plaintiff filed an amended complaint [Docket No. 7].

On June 10, 2008, the Court issued an Order to Show Cause why the complaint should not be dismissed for failure to prosecute. [Docket No. 9]. As of June 29, 2008, no defendant had been served pursuant to Rule 4 of the Federal Rules of Civil Procedure. *See* Order to Show Cause. A hearing was set for July 9, 2008 at 4:00 p.m., and held. The plaintiff did not appear but plaintiff's daughter, Yolanda Martinez, appeared in court and advised the court that Plaintiff had been deported. The Court thanked Ms. Martinez for advising the court of his deportation and ordered the case dismissed. The Court also advised Ms. Martinez that she could not file documents on her father's behalf nor could she appear for him because she is not a licensed attorney. [Minutes Entry, Show Cause Hearing, Docket No. 11].

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2 The order dismissing the case for failure to prosecute issued on September 30, 2008. [Docket
3 No. 14]. On October 21, 2008, Plaintiff filed this motion for reconsideration of the dismissal order.

4 **Legal Standard**

5 Under Civil Local Rule 7-9(b), before leave to file a motion for reconsideration is granted, the
6 moving party must specifically show:

7 (1) that at the time of the motion for leave, a material difference in fact or
8 law exists from that which was presented to the Court before entry of the
9 interlocutory order for which reconsideration is sought. The party also must
10 show that in the exercise of reasonable diligence the party applying for
11 reconsideration did not know such fact or law at the time of the interlocutory
12 order; or

13 (2) The emergence of new material facts or a change of law occurring after
14 the time of such order; or

15 (3) A manifest failure by the Court to consider material facts or dispositive
16 legal arguments which were presented to the Court before such interlocutory
17 order.

18 Local Rule of Civil Procedure 7-9 permits reconsideration of an order if there has been a change in
19 a material fact or law since the time the original motion was made.

20 **Analysis**

21 Plaintiff contends he served defendant on October 21, 2008 and defendant has failed to
22 appear and answer. In theory, the purported service qualifies as a change in material fact. However,
23 the Court cannot consider the purported service as grounds for reconsidering its dismissal of the
24 case. First, the "Certificate of Service" attached to the motion is insufficient to establish proof of
25 service. It is not made under penalty of perjury, fails to identify the person signing the certificate,
26 and states that "the attached" was placed in a pre-paid envelope and mailed to Emilia Bardine.
27 Service by mail does not comply with Fed. R. Civ. P. 4(e) and (i). And service without a summons
28 and a copy of the complaint is insufficient under Fed. R. Civ. P. 4(c)(1).

Because there is no change in material fact, there is no basis for granting the Plaintiff's
motion.

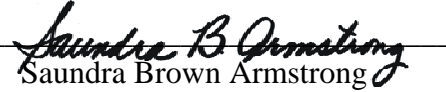
CONCLUSION

For the foregoing reason, the Court DENIES the Motion for Permission to File a Motion for

Reconsideration.

IT IS SO ORDERED.

Dated: 11/20/08


Sandra Brown Armstrong
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5

6 SELOMI M. VILLALTA,
7 Plaintiff,

Case Number: CV06-04087 SBA

CERTIFICATE OF SERVICE

8 v.

9 EMILIA BARDINI et al,
10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on November 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Selomi M. Villalta
19 P.O. Box 11251
20 San Rafael, CA 94912

21 Dated: November 21, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk